

**CONFIDENTIALITY AGREEMENT**  
for the  
**TRI-STATE MINING DISTRICT NATURAL RESOURCE RESTORATION**  
**INTER-GOVERNMENTAL PARTNERSHIP**

**I. INTRODUCTION**

This Agreement is by and between: the State of Kansas; the State of Missouri; the State of Oklahoma; the Eastern Shawnee Tribe of Oklahoma; the Miami Tribe of Oklahoma; the Modoc Tribe of Oklahoma; the Ottawa Tribe of Oklahoma; the Peoria Tribe of Indians of Oklahoma; the Quapaw Tribe of Oklahoma; the Seneca-Cayuga Tribe of Oklahoma, the Wyandotte Tribe of Oklahoma; and the U.S. Department of Interior (hereinafter referred to as the Department and including the U.S. Fish and Wildlife Service and Bureau of Indian Affairs) (collectively referred to herein as Partners). The Partners enter into this Agreement to assist and ensure the communication, coordination and cooperation of the Partners, in their individual and collective activities as Natural Resource Trustees, as they pursue restoration of, and compensation for, natural resources injured by releases of hazardous substances in the Tri-State Mining District.

**II. AUTHORITIES**

Pursuant to 33 U.S.C. §§ 2702 and 2706, section 311(f) of the Clean Water Act (CWA), 33 U.S.C. § 1321(f), and sections 107(a)(4)(C) and 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), including sections 101, 104, 107, and 120, 42 U.S.C. §§ 9607(a)(4)(C) and 9607(f), the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300; the Natural Resource Damage Assessment Regulations, 43 CFR Part 11 and 15 CFR Part 990) and Executive Order 12580 as amended; Surface Water Quality Standards, Kansas Administrative Regulations (K.A.R.) 28-16-28 (b) through (f), Kansas Nongame and Endangered Species Conservation Act, KSA 32-957 et seq., as amended, KSA 65-171u; Section 644.096 RSMo and Section 640.220, et. seq., RSMo.; 27A Ok. Stat. Supp.1998, Sections 1-1-202 & 1-2-101, & 1-3-101 and applicable Tribal authorities; Trustees for natural resources may recover damages for injury to, destruction of, or loss of natural resources resulting from the release of a hazardous substance or the discharge of oil. Such damage awards must be used to restore, replace, rehabilitate, or acquire the equivalent of the injured natural resources.

**III. PURPOSE**

The Partners agree that the free and open exchange of information and sharing of ideas and opinions with other Partners is crucial to achieving each Partner's common and individual goals. The Partners also recognize that all written or verbal communications related to the assessment and recovery of damages for injury to natural resources or recovery of damages are being undertaken in anticipation of litigation. This Agreement is intended to provide for the protection and maintenance of confidentiality by, between, and among the Partners, to the extent permitted by law.

#### IV. DEFINITIONS

Designated Privileged Document. A Designated Privileged Document is a document which is drafted with an expectation of confidentiality, and includes, but is not limited to, communications between the Partners' attorneys or their staff, agents, and/or experts in anticipation of litigation, in the seeking or giving of legal advice, and/or in the context of pre-decisional government deliberations. Designated Privileged Documents include, all data contained in, or is a part of, drafts of uncompleted reports or projects. Designated Privileged Documents shall be marked "Confidential" in large, conspicuous letters on the cover or first page. In the case of multiple documents delivered in one communication, each document must be individually marked "Confidential" to retain its status as a Designated Privileged Document. Individual pages of confidential documents do not need to be marked. Each Partner is responsible for maintaining a complete list of confidential documents transferred to it under this agreement. If a document loses its cover page and the status of a document is unknown, the partner must treat the document as a Designated Privileged Document until it can be positively identified as a non-confidential document.

Designated Privileged Communication. A Designated Privileged Communication is a communication which occurs with an expectation of confidentiality and includes, but is not limited to, communications between the Partner's attorneys or their staff, agents, and/or experts in anticipation of litigation in the seeking or giving of legal advice, and/or in the context of pre-decisional deliberations. Designated Privileged Communications are also those communications that occur between Partners to this agreement whereby any Partner involved in the communication requests that the communication remain confidential and/or privileged. Should any Partner engaged in a communication object to another Partner's request for confidentiality, the objecting Partner is obligated to note the objection and remove him or herself from the communication.

Tri-State Mining District. The Tri-State Mining District refers to the Cherokee County Superfund Site, Cherokee County, Kansas; Oronogo-Duenweg Mining Belt Superfund Site, Jasper County, Missouri; and Tar Creek Superfund Site, Ottawa County, Oklahoma and to any location where discharges or releases of hazardous substances resulting from mining, smelting, milling, transporting, and other human activities related to the location, extraction and production processing of metals and other minerals at the aforementioned Superfund Sites, have come to be located.

#### V. CONFIDENTIALITY

Except as provided below or otherwise provided herein, the Partners shall treat all Designated Privileged Documents generated, and Designated Privileged Communications, by, between or among the Partners as privileged attorney-client communications, attorney work product or protected by other applicable privileges such as the deliberative process privilege (or a combination thereof), and shall protect such documents and communications from disclosure to the maximum extent possible under applicable Federal, State and Tribal law.

The transmittal of a Designated Privileged Document or a Designated Privileged Communication, between or among any of the Partners (and their counsel, representatives, employees, contractors and consultants) or federal, state or tribal response action

agencies, does not waive, or imply any waiver, of any privilege or right which the transmitting entity may assert with respect to that document or communication.

Unless otherwise specifically provided, the Partners shall each be entitled to assert an applicable privilege with respect to any document or communication jointly transmitted, prepared, or funded by the Partners. Each Partner shall be entitled to assert an applicable privilege with respect to any document or communication transmitted, prepared, or funded solely by that Partner. Only by specific written agreement from the Partners or pursuant to Court Order shall disclosure of a Designated Privileged Document or Designated Privileged Communication be made public or disclosed to a non-Partner, other than a federal, state or tribal response action agency or a Partner's counsel, contractors or consultants. Such agreement shall not be construed as a waiver of privilege or confidentiality regarding any other documents or communications. At the request and option of any Partner, designated privileged documents shall be returned to the originating Partner or destroyed, subject to the provisions of the Federal Records Act, 44 U.S.C. § 2901, et seq. and applicable State or Tribal law.

If a subpoena, discovery request, or other request in any form, for a designated privileged document or information provided under this Agreement is received by any Partner, a copy of the subpoena or request will be immediately forwarded to counsel for the Partner or Partners to which the privilege applies and to the government representative(s) who originally generated the document or communication requested. The Partner who receives such a request shall also provide a draft of the Partner's intended response to such request not less than ten (10) days prior to the date that the Partner intends to issue its response. To the extent that applicable law may require a response more promptly than is consistent with the above temporal requirement, the Partners agree to act in good faith to meet any such requirements.

Nothing herein in any way affects or limits the authority of any signatory to waive any privilege and release any documents, information, analyses, opinion, conclusion, or advice that are subject to privileges held exclusively by that signatory.

Designated Privileged Documents shall be maintained in such a manner as to insure that no intentional or unintentional disclosure is made which would compromise any asserted privilege, including segregating designated privileged documents in files that are identified as containing privileged documents that are not to be disclosed publicly or in response to a discovery request in any litigation that may result in connection with the Partners' exercise of their authority.

In the case of Cultural Resource uses or Functions that Tribes do not wish to be made public are divulged to any of the Partners, the Tribe will make the status of that transfer of information known to the Partners to whom it was communicated and this information will be treated as a Designated Privileged Communication by the Partnership.

The provisions of this agreement apply to the representatives, employees, counsel, agents, assigns, contractors and consultants of each Partner. Partners are responsible for ensuring that these individuals are aware of, and in compliance with, the terms of this agreement.



## **VI. RESERVATION OF RIGHTS.**

The Partners recognize and respect the individual autonomy of each Partner. Except where expressly stated herein, the Partners understand that this document does not create or waive any legal rights or obligations between the Partners, or any other persons not a Party to this Agreement.

## **VII. EFFECTIVE DATE, AMENDMENT WITHDRAWAL AND TERMINATION.**

This Agreement shall be effective as to each Partner upon the date the Partner executes this Agreement. This Agreement may not be amended except by written agreement of all the Partners. This Agreement may be executed in one or more counterparts, each of which will be considered an original document. Any Partner may terminate its participation in the Agreement upon giving thirty (30) days written notice to all other Partners or as otherwise provided herein. However, this Agreement shall continue in effect as to each Partner, regardless of withdrawal, until terminated by written agreement of all the Partners. The withdrawal of any Partner to this Agreement for whatever reason, shall not affect the validity of this Agreement among the remaining Partners. If a court of law holds any part of this Agreement void, illegal or unconstitutional, that part may be severable and the remainder of the Agreement may be enforced.

IN WITNESS WHEREOF, the Partners have executed this agreement on the dates attested to below.



STATE OF KANSAS

By: Clyde D. Graeber, Secretary  
Kansas Department of Health and Environment

*Clyde D. Graeber, Asst. Sec.*  
Signature

Date: 9/20/95

OTTAWA TRIBE OF OKLAHOMA

By: Margie Ross, Tribal Administrator  
Title and Name of Authorized Official

Margie Ross  
Signature

Date: 9-14-99

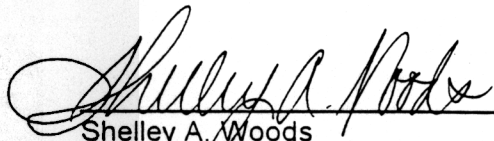
STATE OF MISSOURI

By: Stephen Mahfood, Director  
Department of Natural Resources

Original Signed by Stephen Mahfood  
Signature

Date: \_\_\_\_\_

Jeremiah W. (Jay) Nixon, Attorney General  
State of Missouri

  
\_\_\_\_\_  
Shelley A. Woods  
Assistant Attorney General

Date: September 23, 1999



U.S. DEPARTMENT OF INTERIOR

By: Nancy Kaufman, Regional Director,  
United States Fish and Wildlife Service

ACTING  
Regional Director  
Signature

*Geoffrey J. Quirk*

Date: 9/24/99

QUAPAW TRIBE OF OKLAHOMA

By:

\_\_\_\_\_  
Ed Rodgers, Tribal Chairman

Ed Rodgers  
Signature

Date: 1/18/99

EASTERN SHAWNEE TRIBE OF OKLAHOMA

By: Chief Charles Enyart

Charles Enyart  
Signature

Date: 9-14-99



SENECA-CAYUGA TRIBE OF OKLAHOMA

By: \_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_  
Title and Name of Authorized Official

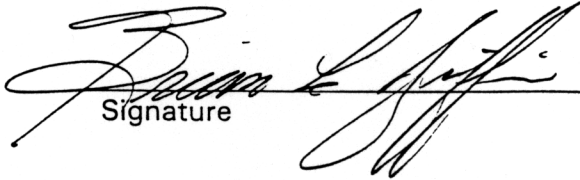
Environmental Director MARION R. SIZEMORE  
\_\_\_\_\_  
Title and Name of Authorized Official

Marion R. Sizemore  
Signature

Date: 10/27/99

STATE OF OKLAHOMA

By: Brian C. Griffin, Oklahoma Secretary of Environment

  
Signature

Date: 10/25/99

MIAMI TRIBE OF OKLAHOMA

By: Les Cusher, Executive Director  
Title and Name of Authorized Official

  
Signature

Date: 11/5/99